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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 UNITED STATES OF AMERICA, )  
09 Plaintiff, ) CASE NO. CR05-141-MJP  
10 v. )  
11 MANUEL JAMES PLASTER, ) SUMMARY REPORT OF U.S.  
12 Defendant. ) MAGISTRATE JUDGE AS TO  
ALLEGED VIOLATIONS  
OF SUPERVISED RELEASE  
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14 An evidentiary hearing on supervised release revocation in this case was scheduled  
15 before me on September 16, 2011. The United States was represented by AUSA Jerrod  
16 Patterson and the defendant by Jay Stansell. The proceedings were digitally recorded.

17 Defendant had been sentenced on or about July 29, 2005 by the Honorable Marsha J.  
18 Pechman on a charge of Felon in Possession of a Firearm, and sentenced to 46 months custody,  
19 3 years supervised release. (Dkt. 21.)

20 The conditions of supervised release included the standard conditions plus the  
21 requirements that defendant submit to mandatory drug testing, participate in a substance abuse  
22 program, abstain from alcohol, submit to search, and provide financial information to his

01 probation officer upon request.

02       On September 21, 2010, defendant admitted violating the conditions of supervised  
03 release by possessing cocaine with intent to distribute. (Dkt. 33). Defendant was sentenced to  
04 four months in custody, 32 months supervised release. (Dkt. 37.) In addition to the previous  
05 conditions of supervision, defendant was required to participate in a mental health program as  
06 directed, reside in and satisfactorily participate in a residential reentry program for up to 150  
07 days, and be prohibited from self-employment or employment by friends or relatives, or for  
08 cash without permission.

09       In an application dated March 21, 2011 (Dkt. 38, 39), U.S. Probation Officer Jerrod  
10 Akins alleged the following violations of the conditions of supervised release:

11       1.     Failing to satisfactorily participate and complete 150 days in a residential  
12 reentry center, in violation of the special condition that he reside in and satisfactorily participate  
13 in a residential reentry center as a condition of supervised release for up to 150 days or until  
14 discharged by the program manager or U.S. Probation Officer.

15       2.     Having contact with Sadie Villars, a convicted felon, without the permission of  
16 the probation officer, in violation of standard condition No. 9.

17       3.     Possession of OxyContin with intent to deliver on March 15, 2011, in violation  
18 of the general condition that he not commit another federal state or local crime.

19       Defendant was advised in full as to the charge and as to his constitutional rights.  
20 Defendant admitted violations 1 and 2 and waived any evidentiary hearing as to whether they  
21 occurred.

22       As to alleged violation 3, an evidentiary hearing was conducted, consisting of the

01 testimony of Anthony Paz, a certified drug dog handler with the Whatcom County Sheriff's  
02 Office. Officer Paz testified that on March 15, 2011 he was on duty driving north on I-5 in  
03 Bellingham when the defendant merged onto the freeway without signaling, in violation of  
04 RCW 46.61.305. The officer pulled the defendant over to the side of the freeway, at  
05 approximately 8:00 pm. The vehicle, a green jeep, had California plates, and the defendant  
06 explained that the vehicle was his girlfriend's car, who was deployed in the Navy. The  
07 defendant's demeanor seemed "normal" according to the officer, although he was skeptical of  
08 the story about the girlfriend's vehicle. However, the defendant's drivers license was valid  
09 and the story checked out. The officer checked for outstanding warrants and found none,  
10 although the officer noted several prior drug convictions, and the fact that the defendant was on  
11 federal "probation". The officer assumed, but did not verify, that the federal charge was a drug  
12 offense.

13 Informed by another officer that he was also reporting to the scene, Officer Paz waited  
14 in his vehicle about 3 minutes. When Officer Tedonio (phonetic spelling) arrived, Officer Paz  
15 patted the defendant down for weapons and applied his drug detecting dog Molly to the vehicle,  
16 about eleven or twelve minutes after the initial stop. The officer testified that he did so  
17 because of the defendant's prior drug convictions and the California-plated vehicle, which was  
18 common for vehicles driven by drug smugglers. The officer was also skeptical about the  
19 defendant's assertion that the vehicle was owned by his girlfriend, although this proved to be  
20 true. The officer testified that the defendant objected when he applied his dog to the vehicle.

21 The dog alerted to the passenger side door and then to the driver's side door. Officer  
22 Paz informed the defendant of this fact and requested consent to search the car, which was

01 declined. After confirmation by the defendant that he claimed ownership of the contents of the  
02 car, the defendant was transported by Officer Tedonio to a convenience store while Officer Paz  
03 waited for a search warrant to be signed. A traffic citation was not issued. The vehicle was  
04 towed to a yard, the warrant was signed, and the car was searched by a colleague. 84  
05 oxycodone pills were found in a ziploc bag inside another ziploc bag, inside a CD case. No  
06 fingerprints or DNA samples were obtained on these items. The defendant was subsequently  
07 arrested.

08 The parties stipulated that Probation Officer Jerrod Akins would testify, if called to the  
09 stand, that the amount of oxycodone pills found in the car could be an amount used by an addict  
10 for individual use.

11 I find that a preponderance of the evidence established that the defendant violated the  
12 conditions of supervised release by possessing OxyContin with intent to deliver on March 15,  
13 2011. The defendant is admittedly not an OxyContin user, so the pills were not likely for his  
14 personal use. He had control of the car and the permission of his girlfriend to use it while she  
15 was deployed in the Navy. I also take into account the defendant's past supervised release  
16 violation for possession of cocaine with intent to deliver, his objection when the officer  
17 deployed the drug detecting dog, and his refusal to consent to search of the vehicle.

18 I therefore recommend the Court find defendant violated his supervised release as  
19 alleged in violations 1, 2, and 3, and that the Court conduct a hearing limited to the issue of  
20 disposition. The next hearing will be set before Judge Pechman.

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01 Pending a final determination by the Court, defendant has been detained.

02 DATED this 16th day of September, 2011.

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05 Mary Alice Theiler  
06 United States Magistrate Judge

07 cc: District Judge: Honorable Marsha J. Pechman  
08 AUSA: Jarrod Patterson  
09 Defendant's attorney: Jay Stansell  
10 Probation officer: Jerrod Akins  
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